

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment pronounced on: January 22, 2014*

+ **CM(M) No.372/2013 & C.M. No.5620/2013**

RAJINDER KUMAR GUPTA & ANR Petitioners
Through Mr.Satish Sahai, Adv. with
Mr.Ankur Aggarwal, Adv.

versus

SANJEEV JAIN & ORS Respondents
Through None

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. Sh.Rajinder Kumar Gupta and Sh.Lalit Mohan Gupta, petitioners herein, have challenged the order dated 3rd December, 2012 passed by the Addl. District Judge, Rohini Courts, Delhi whereby the petitioners' application under Order 1 Rule 10 read with Section 151 CPC for their impleadement as defendants in the suit was dismissed.

2. The brief facts are that Sh.Sanjeev Jain (respondent No.1 herein) filed a suit against the three defendants, i.e. respondents No.2 to 4 herein, namely, Smt.Ramesh Rani, Sh.Honey Jain and M/s Jagat Agro Commodities Pvt. Ltd. (respondents No.2 & 3 are the mother and real brother of respondent No.1/plaintiff) for declaring him as the co-owner to the extent of 1/3rd share in the suit property. The said suit was filed in March, 2009.

3. Upon service, the written statement dated 24th July, 2009 was filed by respondents No.2 & 3 in which they, inter-alia, pleaded that respondent

No.1/ plaintiff had no right, title or interest in the suit property and he is also not entitled to any relief claimed on account of family settlement and by virtue of the Will dated 15th March, 1999. It was also disclosed by them in the written statement that the suit property has already been sold.

4. The respondent No.4, i.e. M/s Jagat Agro Commodities Pvt. Ltd. was proceeded *ex parte* by order dated 29th July, 2009. The respondent No.1/ plaintiff filed the replication dated 13th October, 2009 to the written statement filed by respondents No.2 & 3 and also prayed that he wanted to file an application for impleading the last vendee/transferee as a necessary party. In November, 2009, the application was filed by the respondent No.1 under Order XI Rules 12 & 14 CPC for production of documents upon oath by respondents No.2 & 3. Thereafter, in April, 2010, he moved another application under Order VI Rule 17, Order 1 Rule 10 and Order XXII Rule 10 read with Section 151 CPC for impleading the transferee pendente lite, i.e. respondents No.8 & 9 and others, i.e. respondents No.5 to 9 herein as defendants.

5. In August, 2010, the respondents No.2 & 3 filed their reply to the above said application and also filed reply to the application under Order XXXVIII Rule 5 read with Section 151 CPC. Later on, respondents No.2 & 3 failed to appear in the suit and hence, they were proceeded *ex parte* vide order dated 15th November, 2011. However, the newly impleaded defendants/respondents No.8 & 9 filed their reply dated 8th October, 2010 to the application under Order VI Rule 17, Order 1 Rule 10 and Order XXII Rule 10 read with Section 151 CPC filed by respondent No.1/plaintiff. On 4th December, 2010, the arguments were heard in the said application and the matter was adjourned to 22nd December, 2010 and the matter was kept for

either clarification or for arguments from time to time till 19th November, 2011. But later on, there was no appearance on behalf of respondents No.2 to 9 to contest the suit.

6. By order dated 19th November, 2011, the said application filed by respondent No.1 was allowed by the learned trial Court and the amended memo of parties was filed on 9th December, 2011. The respondents No.8 & 9 filed their written statement on 19th May, 2012 wherein they have clearly disclosed that they are the bonafide purchasers of the suit property and further they have sold the same to the petitioners herein by a registered sale deed dated 28th April, 2010.

7. The petitioners thereafter received the notice dated 27th June, 2012 issued by Sh.B.D.Sharma, Advocate on behalf of respondent No.1/plaintiff where it was disclosed about the pendency of the suit filed by respondent No.1 against respondents No.2 to 9. The petitioners were called upon not to sell the property as well as to pay the rent of the share of respondent No.1.

Thereafter, in August, 2012 the application under Order 1 Rule 10 CPC was filed by the petitioners for their impleadment as defendants in the suit. When the matter was taken up on 18th September, 2012, none was present on behalf of the respondents and the learned counsel for the petitioners filed the photocopy of the sale deed dated 28th April, 2010 which was placed on the record.

8. By the impugned order dated 3rd December, 2012, the learned trial Court dismissed the said application of the petitioners for their impleadment as defendants in the suit. The learned trial Court dismissed the application which was opposed by respondent No.1, mainly in view of judgment of the Supreme Court passed in the case of *Sanjay Verma vs. Manik Roy & Ors.*,

2007(1) AIR 2007 SC 1332 and held that the alienation obviously would be hit by the doctrine of lispendence by the operation of Section 52 of the Transfer of Property Act. It was held that the petitioners cannot be considered to be either necessary or proper parties to the suit as the respondent No.1 is the *dominus litus* of his suit who has opposed the impleadment of the petitioners. It was further held that the action of the alienation during the pendency of the suit by respondents No.8 & 9 herein namely, Sanjeev Chauhan and Sunil Tanwar does not appear to be bonafide as no permission was taken by them from court with regard to alienation during the pendency of suit and it seems to be an attempt on the part of the respondents No.8 & 9 to complicate and delay the suit.

9. The said order was challenged by the petitioners herein by filing the present petition. Notice of the petition was issued to the respondents. However, when the matter was heard, no one appeared on behalf of any of the respondents despite of service. On 29th July, 2013, it was informed by the learned counsel for the petitioners that respondent No.6 was a formal party and its service be accordingly dispensed with.

10. It is alleged by the petitioners that respondents No.2 & 3 herein have sold the property to the parties i.e. rest of the respondents they are parties to the suit who have further sold the same to the petitioners. Counsel has informed that the said respondents No.2 & 3 are not appearing before the trial Court so as other respondents who have sold the property to the petitioners. The respondents are also not appearing in the present case as all the respondents have lost their interest in the matter after receiving the consideration. Therefore, even on that account it has become necessary for

the petitioners to join the proceedings so that the disputes raised by respondent No.1/plaintiff are to be decided by the learned trial Court as to whether he has any interest in the suit property. The defence raised by the mother and his brother that he had no right and interest in the property has to be decided. Thus, petitioners application ought to have been allowed. According to him, the mother and brother of respondent No.1 are hand-in-glove with each other and want to take the advantage under the said circumstances. The appearance of the petitioners is, therefore, necessary, as their substantial rights are involved in the present suit as they have bonafidely purchased the suit property on 28th April, 2010 and are in possession of the same. It was argued by Mr.Satish Sahai that before purchasing of the property, there is no material on record that the petitioners were aware about the litigation pending between respondent No.1 and respondents No.2 to 4. It was only in the year 2012 when a notice was issued by Sh.B.D.Sharma, Advocate on behalf of respondent No.1 to the petitioners and others wherein it was disclosed about the pendency of the suit against respondents No.2 to 9 and the petitioners were called upon not to sell the suit property and also to pay the rent of the share of the respondent No.1. Immediately thereafter, the application under Order 1 Rule 10 CPC was filed by the petitioners for their impleadment as defendants in the suit.

11. It is also argued by Mr.Sahai that the judgments referred by respondent No.1/plaintiff during the course of hearing of the application under Order 1 Rule 10 CPC were not applicable to the facts of the present case and were clearly distinguishable. It is argued that the learned trial Court erred in not appreciating that in the judgment of *Sanjay Verma's* case (supra), it was observed while relying upon the decision in the case of

Dhurander Prasad Singh vs. Jai Prakash University & Ors., 2001 (6) SCC 534 that a transferee pendente lite can be impleaded if it is shown that the litigation was not properly conducted by the original party or he colluded with the adversary then such person should be impleaded and the cause of action is not prolonged by mere transfer of the title as it is the old suit which is carried on at his instance and transferee pendente lite is bound by all the proceedings upto the stage when he obtained leave of the Court to carry on the proceedings.

12. It is further argued that the said judgment referred by the learned trial Court in the impugned order is distinguishable in the present case, as respondents No.2 & 3 are the mother and brother of the respondent No.1 who have not been appearing anymore to contest the suit filed by respondent No.1 and they have colluded with each other. As far as the other respondents are concerned, it is argued by Mr.Sahai that after selling the property to the petitioners, they are totally reluctant even to file the written statement and they are also not contesting and defending the said suit in a proper and appropriate manner. After the transfer of their rights in the suit property to the petitioners, they have lost all their interests in the litigation.

13. With regard to another judgment referred by respondent No.1 before the learned trial Court is ***Bibi Zubaida Khatoon vs. Nabi Kassan Sabeel & Anr.***, AIR 2004 SC 173 wherein it is argued that the said judgment is also clearly distinguishable, as in that case the action of alienation was not found bonafide and the application was moved after inordinate delay of the filing of the suit.

14. In the present case, as per the pleadings of the petitioners, it is evident that the petitioners had no knowledge about the litigation pending with

regard to the suit property at the time of purchasing the same. Even, in the sale deed executed in favour of the petitioners, such details were not mentioned. The petitioners have only come to know about the pendency of the suit through the notice dated 27th June, 2012 issued by Mr.B.D.Sharma, Advocate on behalf of respondent No.1. The application under Order 1 Rule 10 CPC was filed by the petitioners at the earliest, i.e. within two months. The case is at the initial stage, as the pleadings have not been completed and the issues are yet to be framed in the matter.

15. After having gone through the pleadings and the documents placed on record, I am of the considered view that the impugned order suffers from infirmity and the same is liable to be set-aside on the following reasons:-

- (i) The learned trial Court erred in not impleading the petitioners as defendants only on account of the principles specified in Section 52 of the Transfer of Property Act by holding that the said provisions rest upon an equitable and just foundation and it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail, which was materially wrong inasmuch as Section 52 of the Transfer of Property Act does not bar alienation, but only says that alienations pendente lite shall not affect the right of any other party in the suit except when the said alienation is made under the authority of the Court and on such terms it may impose, as also being observed in the later part of the impugned judgment by the learned trial court.
- (ii) The learned trial Court erred in law and acted with material irregularity in observing that the alienation during the pendency

of the suit by respondents No.8 and 9 herein does not appear to be bonafide, without giving any reason whatsoever for making such an observation in the impugned order.

- (iii) The learned trial Court also erred in law and acted with material irregularity in the exercise of its jurisdiction by holding that the alienation by respondents No.8 and 9 herein is an attempt on their part to complicate and delay the suit for dismissing the application of the petitioners for their impleadment inasmuch as it failed to observe that the case is at initial stage only and issues have not been framed and by mere impleadment of the petitioners as defendants, the same cannot result in any complication and delay in disposal of the suit.
- (iv) Order XXII Rule 10 CPC specifically provides that in case of an assignment, creation or devolution of an interest, during the pendency of the suit, the suit may be continued by or against the person to or upon whom such interest has come or devolved, which is the case of the petitioners.
- (v) The petitioners are not disputing about the principles enshrined in Section 52 of the Transfer of Property Act and in fact, they are seeking their impleadment as defendants in the suit and are not claiming any immunity from the vigours of Section 52 of the Act. The learned trial Court did not exercise its jurisdiction by not appreciating the provisions of Order XXII Rule 10 CPC which specifically provides that in case of an assignment, creation or devolution of an interest, during the pendency of the suit, the suit may be continued by or against the person to or

upon whom such interest has come or devolved, which is the case of the petitioners in the present matter.

- (vi) It is the admitted position in the present case that the only interested parties at present are the petitioners. The respondents No.2 & 3 have admittedly sold the property to the assignees who have ultimately transferred the rights of the property in favour of the petitioners during the pendency of the suit. The respondents No.2 & 3 and the other respondents are not contesting the said suit and have lost all their interests or may collude with each other. Therefore, it has become necessary that the petitioners are to be impleaded as defendants in the suit who are the purchasers and are in possession of the suit property. Their specific rights in the property are involved. Thus, they are the proper and necessary parties in the present suit.

16. The present petition is accordingly allowed. The impugned order dated 3rd December, 2013 is set-aside. The prayer made in the application under Order 1 Rule 10 CPC is allowed. The petitioners are impleaded as defendants in the suit.

17. No costs.

(MANMOHAN SINGH)
JUDGE

JANUARY 22, 2014